



Warren L. Dean, Jr.

P 202.585.6908

F 202.585.6969

wdean@thompsoncoburn.com

May 18, 2016

**VIA FEDERAL EXPRESS**

Nicoletta Di Forte  
Deputy Director for Enforcement  
Emergency and Remedial Response Division  
U.S. Environmental Protection Agency, Region 2  
290 Broadway  
New York, New York 10007-1866

RE: Diamond Alkali Superfund Site, Lower 8.3 Miles of Lower Passaic River, Essex and Hudson Counties, New Jersey

Notice of Potential Liability under 42 U.S.C. Section 9607(a)

Commencement of Negotiations for Remedial Design

Dear Ms. Di Forte:

On behalf of our client, Eden Wood Corporation, this will acknowledge receipt of your letter dated March 31, 2016 with the above-referenced subject line ("March 31 Letter").

Summary Response

Although the March 31 Letter does not require a response, we believe it is important to advise you of a significant development concerning our client's alleged liability for the Diamond Alkali Superfund Site and/or any portion thereof, including the Lower Passaic River Study Area (the "Site"). Specifically, it has come to our attention that the Eden Wood Corporation to whom EPA directed the March 31 Letter (and previous letters alleging liability for the Site) is not, and has never been, associated in any way with Whippany Paper Board Company, Inc. ("Whippany") or the former Whippany facility at 1 Ackerman Avenue in Clifton, New Jersey ("Clifton Plant"). Rather, Eden Wood Corporation is a Delaware corporation that was not formed until June 6, 2001, more than ten years *after* Whippany changed its name to Eden Wood Corporation and more than twenty years *after* Whippany ceased operations at the Clifton Plant.

In response to allegations and demands in letters from EPA and the Cooperating Parties Group for the Lower Passaic River ("CPG"), Eden Wood Corporation mistakenly signed the 2007 and 2012 Administrative Orders on Consent and Settlement Agreements ("AOCs") with EPA concerning the Remedial Investigation / Feasibility Study for the lower 17 miles of the Passaic River and the removal action at River Mile 10.9. To date, Eden Wood Corporation has paid over \$1.8 million in connection with those AOCs as a result of the mistaken identification of Eden

Wood Corporation as a responsible party for the Site (and Eden Wood Corporation reserves all rights with respect thereto). However, because Eden Wood Corporation is not associated in any way with Whippany or the Clifton Plant, it is not a responsible party under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (“CERCLA”) for the Site. Accordingly, Eden Wood Corporation must decline to participate in any further proceedings concerning the Site, including the instant request by EPA for negotiations concerning the remedial design of the remedy for the lower 8.3 miles of the Lower Passaic River.

### Analysis

On September 11, 2006, EPA issued a General Notice Letter (“GNL”) under CERCLA to Eden Wood Corporation. The GNL and a follow-up letter from EPA dated January 31, 2007 (“Follow-Up Letter”) alleged that Eden Wood Corporation was a responsible party under CERCLA as the purported successor to Whippany for hazardous substance discharges into the Lower Passaic River from the former Clifton Plant. Although the specific basis for Eden Wood Corporation’s alleged CERCLA liability is not identified in the March 31 Letter, Attachment 1 to the Letter suggests it is based upon this same premise – that Eden Wood Corporation is the corporate successor to Whippany which historically owned/operated the Clifton Plant.

EPA’s identification of Eden Wood Corporation as a responsible party appears to be based solely on information provided to EPA by the CPG in a May 3, 2006 report (“CPG Report”). We assume the CPG, and EPA by extension, incorrectly concluded that our client was the successor to Whippany based on New Jersey Secretary of State records indicating that Whippany, a New Jersey Corporation, changed its name to Eden Wood Corporation in July of 1988.<sup>1</sup>

However, the Eden Wood Corporation that received the GNL, the Follow-Up Letter and the March 31 Letter is a *Delaware* corporation that was first incorporated on June 6, 2001.<sup>2</sup> Therefore, this entity is not the legal successor to Whippany (which changed its name to Eden Wood Corporation in 1988) and is not associated in any way with Whippany’s alleged discharges from the Clifton Plant, which ceased operations in 1980.

### Additional Information

You should also be aware that Whippany’s liabilities with respect to the Site were discharged in bankruptcy. Whippany filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the District of New Jersey in February of 1980 and ceased operations at the Clifton Plant about four months later. The Bankruptcy Court issued an order confirming

---

<sup>1</sup> See Attachment A, Certificate of Amendment to the Certificate of Incorporation of Whippany Paper Board Co., Inc. filed with the New Jersey Secretary of State on July 19, 1988. This Certificate was identified in the CPG Report as Document ABK 000396 to 000398.

<sup>2</sup> See Attachment B, Certificate of Incorporation of “Eden Wood Corporation” filed with the Delaware Office of the Secretary of State on June 6, 2001.



May 18, 2016

Page 3

Whippany's plan of reorganization on March 31, 1981 ("Order"). Under the Bankruptcy Code, 11 U.S.C. §1141(d)(1), the Order discharged Whippany from any and all liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured debts that arose before the date of confirmation, March 31, 1981. As noted, Whippany ceased operations at the Clifton Plant in 1980. After Whippany's discharge in bankruptcy, it never resumed operations at the Clifton Plant and sold it in 1987.

The CPG Report and our own research also indicate that other entities owned/operated the Clifton Plant and may be responsible parties for the Site. V. Ponte and Sons ("Ponte") purchased the Clifton Plant from Whippany in 1987 and expressly assumed the obligation to clean up the Clifton Plant. Ponte transferred the Clifton Plant to Recycled Paper Board, Inc. ("RPBI") in 1988. (Various members of the Ponte family owned RPBI.) Ponte and/or RPBI owned and operated the Clifton Plant for paper manufacturing from 1987 through at least 2004. Another company, RD Acquisition #3, LLC, purchased the Clifton Plant in 2006.

Request for Removal from RP List

In light of the fact that Eden Wood Corporation is not the successor to Whippany Paper Board Company, Inc. and had absolutely nothing to do with Whippany's Clifton Plant, Eden Wood Corporation respectfully requests that EPA remove Eden Wood Corporation from the list of responsible parties for the Site.

Please contact me should you have any questions.

Very truly yours,

Thompson Coburn LLP

By   
Warren L. Dean, Jr.

WLD/cmk

Enclosures

Cc: William H. Hyatt, Jr. (Coordinating Counsel to CPG)

JUL 24 1997

4:21PM

EDEN WOOD REALTY COMPANY

NO.615 P.2/4

Form C-102A  
Rev. 7/83

CERTIFICATE OF AMENDMENT TO THE

CERTIFICATE OF INCORPORATION OF

WHIPPANY PAPER BOARD CO., INC.

(For Use by Domestic Corporations Only)

**FILED**

JUL 18 1988

**JANE BURGIO**

To: The Secretary of State - FEDERAL EMPLOYER IDENTIFICATION NO. - Secretary of State  
State of New Jersey 22 - 1380200

Pursuant to the provisions of Section 14A:9-2(4) and Section 14A:9-4(3), Corporations, General, of the New Jersey Statutes, the undersigned corporation executes the following Certificate of Amendment to its Certificate of Incorporation:

1. The name of the corporation is Whippany Paper Board Co., Inc.

2. The following amendment to the Certificate of Incorporation was approved by the directors and thereafter duly adopted by the shareholders of the corporation on the 5th day of July, 19 88:

Resolved, that Article First of the Certificate of Incorporation be amended to read as follows: The name of the corporation is EDEN WOOD CORPORATION.

3. The number of shares outstanding at the time of the adoption of the amendment was 1000. The total number of shares entitled to vote thereon was 1000.

If the shares of any class or series are entitled to vote thereon as a class, set forth below the designation and number of outstanding shares entitled to vote thereon of each such class or series. (Omit if not applicable.)

4. The number of shares voting for and against such amendment is as follows: (If the shares of any class or series are entitled to vote as a class, set forth the number of shares of each such class and series voting for and against the amendment, respectively.)

<u>Number of Shares Voting For Amendment</u>	<u>Number of Shares Voting Against Amendment</u>
<u>1000</u>	<u>0</u>

(If the amendment is accompanied by a reduction of stated capital, the following clause may be inserted in the Certificate of Amendment, in lieu of filing a Certificate of Reduction under Section 14A:7-19, Corporations, General, of the New Jersey Statutes. Omit this clause if not applicable.)

5. The stated capital of the corporation is reduced in the following amount:

N/A. The manner in which the reduction is effected is as follows:

The amount of stated capital of the corporation after giving effect to the reduction is \$ N/A. (Must be set forth in dollars.)

946010565

ABK000396

6. If the amendment provides for an exchange, reclassification or cancellation of issued shares, set forth a statement of the manner in which the same shall be effected. (omit if not applicable.)

N/A

(Use the following only if an effective date, not later than 30 days subsequent to the date of filing is desired.)

7. The effective date of this Amendment to the Certificate of Incorporation shall be N/A

Dated this 13<sup>th</sup> day of July, 1988

WHIPPANY PAPER BOARD CO., INC.

(Corporate Name)

By [Signature]

(Signature)

John L. Neu, President

(Type or Print Name and Title)

(May be executed by the chairman of the board, or the president, or a vice-president of the corporation.)

Return to Secretary of State, CH 360, Trenton, N. J. 08622. Attn: Corporation Filing

Filing Fee \$30.00

NOTE: No recording fees will be assessed.

TRANSACTION NO.:

NUMBER NO.:

FILED BY:

WHIPPANY PAPER BOARD CO., INC.  
(Corporate Name Only)CERTIFICATE OF AMENDMENT TO  
CERTIFICATE OF INCORPORATION OF  
WHIPPANY PAPER BOARD CO., INC.

RECORDED AND FILED:

Recorder's Initials

946010566

ABK000397

P. 4/4

NO. 615

EDEN WOOD REALTY COMPANY

4:22PM

JUL. 24, 1987

I, The Secretary of State of the State of  
New Jersey, DO HEREBY CERTIFY that the foregoing is a true copy  
of CERTIFICATE OF *Amendment*  
and the endorsements thereon, as the same is taken from and  
compared with the original filed in my office on the *19th*  
day of *July*, A.D. *1988* and now remaining on file  
and of record therein.



IN TESTIMONY WHEREOF, I have  
hereunto set my hand and affixed my  
Official Seal at Trenton, this *19th*  
day of *July*, A.D. *1988*

SECRETARY OF STATE

*Jane B. Langlois*

946010567

ABK000398



*State of Delaware*  
*Office of the Secretary of State*

---

PAGE 1

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "EDEN WOOD CORPORATION", FILED IN THIS OFFICE ON THE SIXTH DAY OF JUNE, A.D. 2001, AT 9 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



*Harriet Smith Windsor*  
*Harriet Smith Windsor, Secretary of State*

3400425 8100

AUTHENTICATION: 1175373

010271743

DATE: 06-06-01

CERTIFICATE OF INCORPORATION  
OF  
EDEN WOOD CORPORATION

---

FIRST. The name of this corporation shall be:

EDEN WOOD CORPORATION

SECOND. Its registered office in the State of Delaware is to be located at 2711 Centerville Road Suite 400 in the City of Wilmington, County of New Castle and its registered agent at such address is CORPORATION SERVICE COMPANY

THIRD. The purpose or purposes of the corporation shall be:

To engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

FOURTH. The total number of shares of stock which this corporation is authorized to issue is:

One Thousand Shares (1,000) With No Par Value

FIFTH. The name and address of the incorporator is as follows:

Tracy Manganelli  
Corporation Service Company  
2711 Centerville Road Suite 400  
Wilmington, DE 19808

SIXTH. The Board of Directors shall have the power to adopt, amend or repeal the by-laws.



SEVENTH. No director shall be personally liable to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty by such director as a director. Notwithstanding the foregoing sentence, a director shall be liable to the extent provided by applicable law, (i) for breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the Delaware General Corporation Law or (iv) for any transaction from which the director derived an improper personal benefit. No amendment to or repeal of this Article Seventh shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment.

IN WITNESS WHEREOF, the undersigned, being the incorporator hereinbefore named, has executed, signed and acknowledged this certificate of incorporation this 6th day of June, 2001.

  
Tracy Manganelli  
Incorporator